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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 SECURITIES AND EXCHANGE COMMISSION,

Case No.: 2:13-cv-01658-JCM-CWH

10 Plaintiff,

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vs.

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EDWIN YOSHIHIRO FUJINAGA and
MRI INTERNATIONAL, INC.,

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Defendants,

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and

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CSA SERVICE CENTER, LLC
THE FACTORING COMPANY,
JUNE FUJINAGA, and
THE YUNJU TRUST,

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Relief Defendants.

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**ORDER GRANTING MOTION FOR
ORDER (1) AUTHORIZING,
APPROVING AND CONFIRMING
SALE OF REAL PROPERTY
LOCATED AT 5330, 5370, AND 5420
S. DURANGO DRIVE AND SALE
AND OVERBID PROCEDURES AND
FOR RELATED RELIEF; AND (2)
GRANTING RELIEF FROM LOCAL
RULE 66-5 PERTAINING TO
NOTICE TO CREDITORS**

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This came before the court on the *Notice of Motion and Opportunity to Object, and Motion for Order (1) Authorizing, Approving and Confirming Sale of Real Property Located at 5330, 5370, and 5420 S. Durango Drive and Sale and Overbid Procedures and for Related Relief; and (2) Granting Relief from Local Rule 66-5 Pertaining to Notice to Creditors* (the “Motion”) [**ECF. No. 374**] and the Declaration of M. Val Miller in Support of the Motion (the “Miller Declaration”) [**ECF No. 375**] brought by Robb Evans & Associates LLC, the court-appointed receiver (the “Receiver”) by and through its undersigned counsel. The Motion and the Miller Declaration were served via the ECF system on January 16, 2017, and by U.S. Mail on all known non-consumer creditors of the estate on January 17, 2017, and by direct Email on January 17, 2017, to other parties who informally requested the Receiver provide notices. The dates and

1 manner of service are set for in in the Certificate of Service [**ECF No. 381**] of the Motion and
2 the Miller Declaration.

3 The Motion came on regularly before the Court for determination, the Honorable James
4 C. Mahan, United States District Judge, presiding. Pursuant to LR 7-2, an opposing party must
5 file points and authorities in response to a motion and failure to file a timely response constitutes
6 the party's consent to the granting of the motion. See LR 7-2(d); United States v. Warren, 601
7 F.2d 471, 474 (9th Cir. 1979). Neither the Defendants nor any other party has filed any
8 opposition, objection, and/or points and authorities in response to the Motion and the deadline to
9 do so has passed. Nevertheless, the court reviewed the substantive merits and grants the
10 Receiver's Motion in full.

11 IT IS ORDERED that:

12 1. The Motion, and all relief sought therein, is granted in its entirety;
13 2. Without limiting the generality of the foregoing:

14 2.1. The Receiver's proposed sale and overbid procedures for the Durango
15 Property,¹ located at 5330, 5370, and 5420 S. Durango Drive, Las Vegas, Nevada, and
16 the Receiver's request for an order authorizing and confirming the sale on an "as is" basis
17 by private sale either (a) to IIP Durango 3, LLC and/or its assignee (the "Proposed
18 Buyer"), an arm's length buyer, at a purchase price of \$12,000,000.00 pursuant to the
19 Purchase and Sale Agreement attached as Exhibit 1 to the Miller Declaration or (b) to
20 such higher qualified overbidder who submits the highest qualified overbid at a

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¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion.

1 subsequent overbid session, if any, to be conducted under the terms and conditions more
2 fully set forth herein;

3 2.2. The Court hereby authorizes the sale of the Durango Property subject to
4 the following overbid procedures, which the Court hereby approves:

5 2.2.1. The overbid session shall be conducted after entry of this order
6 granting the Motion. The overbid session will be conducted at the Robb Evans &
7 Associates LLC, 5560 S. Ft. Apache Road, Suite 120, Las Vegas, Nevada 89148;

8 2.2.2. The Receiver will cause to be published a notice of the proposed
9 sale of the Durango Property to a qualified bidder at the overbid session, which
10 notice shall state the date, time and place of the overbid session, the requirement
11 for pre-qualification by overbidders and the terms and conditions of the
12 overbidding and sale of the Durango Property, as described below (“Overbid
13 Notice”). The Receiver will cause the Overbid Notice to be published in Las
14 Vegas Review Journal one time at least 10 calendar days prior to the scheduled
15 overbid session date;

16 2.2.3. Any person wishing to overbid at the overbid session shall be
17 required to pre-qualify with the Receiver no later than 10:00 a.m., two business
18 days preceding the overbid session, by delivering to the Receiver’s office located
19 at 5560 S. Ft. Apache Road, Suite 120, Las Vegas, Nevada 89148: (a) notice in
20 writing of the prospective overbidder’s intent to overbid, together with (b) written
21 verification from a financial institution demonstrating to the Receiver’s
22 satisfaction, in the Receiver’s sole opinion, discretion and judgment, the
23 prospective overbidder’s ability to complete and close a purchase of the Durango
24 Property through sufficient funds or credit facilities within 10 days of the date of
25 the overbid session, and (c) a cashier’s check in the sum of \$250,000.00 payable
26 to “Robb Evans & Associates LLC, Receiver of MRI International, Inc. et al.”,

1 which cashier's check shall become non-refundable upon acceptance of the
2 overbidder's overbid at the conclusion of the overbid session;

3 2.2.4. Overbidders bidding at the overbid session will be deemed to
4 have completed all inspections of the Durango Property and will be deemed to
5 have waived and/or removed all contingencies in favor of the buyer under the
6 Purchase and Sale Agreement, including, without limitation any contingency
7 pertaining to inspection of title, and will be required to complete a cash purchase
8 of the Durango Property and close escrow for the purchase within 10 days of the
9 date of the overbid session. The successful overbidder will be required to execute
10 a purchase agreement for the Durango Property substantially in the form of the
11 Purchase and Sale Agreement together with a waiver of all buyer contingencies
12 promptly after conclusion of the overbid session;

13 2.2.5. The initial overbid shall be in the amount of \$13,200,000.00 (a
14 sum that is \$1,200,000.00, or 10%, higher than the purchase price under the
15 Purchase and Sale Agreement, and all subsequent overbids shall be in an amount
16 at least \$25,000 higher than the preceding bid; and

17 2.2.6. Pursuant to the Purchase and Sale Agreement and the Listing
18 Agreement with the Brokers, a sales commission in the amount of 5% of the
19 purchase price paid for the Durango Property shall be paid by the Proposed
20 Buyer, or if a higher overbid is received and accepted at the overbid session, by
21 the winning overbidder, from the proceeds of sale of the Durango Property at close
22 of escrow, to the Brokers as listing agent under the Listing Agreement and a
23 cooperating broker representing the buyer, if any, under the terms of the Listing
24 Agreement; and

25 2.2.7. The sale of the Durango Property by private sale to the
26 Proposed Buyer under the Purchase and Sale Agreement, or to the person who
27 submits the highest qualified overbid at the overbid session to be conducted
28 pursuant to the foregoing procedures, is hereby confirmed without further notice

1 or hearing and without the necessity of any subsequent motion for confirmation of
2 the sale;

3 3. The Receiver is authorized to execute all documents and instruments necessary or
4 convenient to complete, implement, effectuate and close the sale of the Durango Property to the
5 purchaser, including but not limited to a deed conveying title to the Durango Property free and
6 clear of all existing liens, claims, accrued and unpaid taxes and/or outstanding utility charges as
7 of the closing;

8 4. The Receiver is authorized to permit and/or cause to be paid from the proceeds of
9 the sale of the Durango Property: (a) all ordinary and customary closing costs, all costs and
10 expenses required to be paid under the terms of the Purchase and Sale Agreement by the seller
11 from the proceeds of sale, (b) the discounted settlement payment of \$140,000.00 to satisfy the
12 lien, and disburse to a judgment creditor/lien holder, as discussed in more detail in the Motion
13 and Exhibit 2 to the Miller Declaration, (c) all commissions provided for in the Purchase and
14 Sale Agreement and the Receiver's Listing Agreement for the Durango Property, and (d) all real
15 property tax liens and prorated real property taxes due up to the date of closing; and

16 5. Notice of the Motion is deemed to be sufficient under LR 66-5 based on the
17 service of the Motion, which Motion contains notice of the Motion and opportunity to object,
18 and by serving the Motion on all known non-consumer creditors of the estate concurrent with the
19 filing of this Motion with the Court, but not on the tens of thousands of potential foreign
20 creditors.

21 **IT IS SO ORDERED.**

22 Dated: February 13, 2017

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25 The Honorable James C. Mahan
26 UNITED STATES DISTRICT JUDGE